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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,877	09/05/2006	Sophie Bassez	P70926USO	1051
136 7590 08/09/2010 JACOBSON HOLMAN PLLC 400 SEVENTH STREET N.W. SUITE 600 WASHINGTON, DC 20004				
EXAMINER PAULS, JOHN A				
ART UNIT		PAPER NUMBER		
3686				
MAIL DATE		DELIVERY MODE		
08/09/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/553,877

**Applicant(s)**

BASSEZ ET AL.

**Examiner**

JOHN A. PAULS

**Art Unit**

3686

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/GC/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date 1/3/2006 and 7/2/2010

## **DETAILED ACTION**

### ***Status of Claims***

1. This action is in reply to the application filed on 21 September, 2005.
2. Claim 7 has been amended by a preliminary amendment filed on 21 September, 2005.
3. Claims 1 - 9 are currently pending and have been examined.

### ***Information Disclosure Statement***

4. The Information Disclosure Statements filed on 3 January, 2006 and 2 July, 2010 have been considered. Initialed copies of the Form 1449 are enclosed herewith.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
6. Claims 1 – 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites that the “compression simulation means determines ... pressure values that are likely to be exerted by the orthosis...”. The term “likely to be” is indefinite.
7. Claims 3 – 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 3 – 9 recite that the pressure value is calculated; however, Claim 1 discloses that the pressure value is “determined”.

8. Claims 4, 6 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 4, 6 and 8 recite that the pressure values are calculated (determined) at the various points of “the contour of the/that/a section of the limb”. There is no antecedent basis in the claim for this limitation.
9. Claims 8 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 8 and 9 recite “the variation”. There is no antecedent basis in the claim for this limitation. Examiner cannot determine what the variation relates to (i.e. pressure value).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. Claims 1 - 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flaud et al. (WO 01/11337) as disclosed in US 6,499,356 B1 and in further view of Pomatto et al. (US PGPUB 2002/0010408 A1).

### CLAIM 1

Flaud as shown discloses an extensometer for measuring the forces exerted by an elastic orthosis with the following limitations:

- *means (10) for establishing a second file containing data representative of the dimensional and rheological characteristics of the orthosis defined at different successive coordinates (Z) of that orthosis; (see at least Flaud column 2 line 10 – 22 and line 41 – 45; and column 3 line 28 – 32 and line 47 – 50);*
- *compression simulation means (48) able to determine, using data from the first and second files, compression pressure values that are liable to be exerted by the orthosis on the limb at a plurality of points of said array; (see at least Flaud column 2 line 33 - 36 and line 46 – 47; column 3 line 21 – 25; column 4 line 6 – 8 and column 4 line 63 to column 5 line 1);*
- *means (50) for displaying said pressure values determined by the compression simulation means; (see at least Flaud column 5 line 1 – 13).*

Flaud as shown discloses the limitations shown above. Flaud may or may not specifically disclose the following limitations; however, Pomatto does:

- *means (26) for establishing a first file containing data representative of the morphological characteristics of the limb (30), this first data file comprising the*

*coordinates, in a three-dimensional space, of a array of points (68) distributed on the surface of the limb along a succession of contours (66) defined at different successive coordinates (Z) of that limb; (see at least Pomatto paragraph 0015 and 0031).*

Pomatto discloses a system for manufacturing cranial orthosis which includes scanning a body part to generate data representative of the surface shape and storing the data in a database.

Pomatto discloses that the data may be used to create a mold of the shape. It would be obvious to one of ordinary skill in the art that this mold could be used in the measuring system of Flaud.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the measuring system of Flaud so as to have included scanning a body part to generate data representative of the surface shape; storing the data in a database and creating a mold of the body part for use in the measuring system, in accordance with the teaching of Pomatto, in order to create a custom orthosis, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

#### **CLAIMS 2 – 4, 6, 8 and 9**

The combination of Flaud/Pomatto as shown discloses the limitations shown above relative to Claim 1. Additionally, Flaud discloses the following limitations:

- *the second data file contains data for the flat width (L0) of the orthosis at said successive coordinates and data (dx/df) representative of the deformation characteristic of the orthosis as a function of the tension exerted thereon between points situated at*

*consecutive coordinates; (see at least Flaud column 2 line 26 – 28, line 39 – 44 and line 46 – 47; column 4 line 63 to column 5 line 1 and column 5 line 5 – 8);*

- *designation means enabling an operator of the device to designate a point of the array and to command the pressure value display means to display the value of the pressure calculated at the designated point (82); (see at least Flaud column 5 line 1 – 13);*
- *designation means enabling an operator of the device to designate a coordinate of the array and to command the pressure value display means to display the pressure value calculated at the various points of the contour of the section of the limb situated at the designated coordinate (78); (see at least Flaud column 5 line 1 – 13);*
- *the display means comprise graphical means able to display a two- dimensional graphical representation (58) of a section of the limb and to associate locally with that graphical representation the pressure values calculated at the various points of the contour of that section; (see at least Flaud column 5 line 1 – 13);*
- *the display means comprise graphical means able to display a characteristic (62) giving the variation as a function of angular position of the pressure calculated at the various points of the contour of a section of the limb situated at a given coordinate; (see at least Flaud column 5 line 1 – 13);*
- *the simulation means are also able to determine average values of the compression pressure at points situated at the same coordinate, and the display means comprise graphical means able to display a characteristic (56; 80) giving the variation as a*

*function of the coordinate of the calculated mean compression pressure; (see at least Flaud column 5 line 1 – 13).*

#### **CLAIM 7**

The combination of Flaud/Pomatto as shown discloses the limitations shown above relative to Claim 1. Flaud/Pomatto may or may not specifically disclose the following limitations:

- *the graphical means associate the calculated pressure values with the graphical representation by superimposing a coding by grey levels or false colors of the pressure calculated at those points on said graphical representation at the location of the various points.*

However, Examiner takes **Official Notice** that it is old and well known to display various types of data in grey scales or using color coding. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the measuring system of Flaud/Pomatto so as to have included displaying various types of data in grey scales or using color coding, in accordance with the **Official Notice** taken, in order to display the data in a user friendly manner, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

#### **CLAIM 5**

The combination of Flaud/Pomatto as shown discloses the limitations shown above relative to Claim 1. Additionally, Pomatto discloses the following limitations:



- *the display means comprise graphical means able to display a three- dimensional graphical representation (52) of the limb and to associate locally with that graphical representation the pressure values calculated at the various points of said array; (see at least Pomatto paragraph 0015 and 0028).*

Pomatto discloses a system for manufacturing cranial orthosis which includes displaying data in three dimensions. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the measuring system of Flaud so as to have included displaying data in three dimensions, in accordance with the teaching of Pomatto, in order to display the data in a user friendly manner, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

### ***Conclusion***

Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **John A. Pauls** whose telephone number is **(571) 270-5557**. The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **JERRY O'CONNOR** can be reached at **571.272.6787**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197**.

Any response to this action should be mailed to:

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/J. A. P./  
Examiner, Art Unit 3686  
Date: 29 July, 2010

/Gerald J. O'Connor/  
Supervisory Patent Examiner  
Group Art Unit 3686